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SACRAMENTO COURTS
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

FAIR POLITICAL PRACTICES
COMMISSION, a state agency,

Plaintiff,

v.

Case No. 02AS04544

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION TO
QUASH**

SANTA ROSA INDIAN
COMMUNITY OF THE SANTA
ROSA RANCHERIA dba PALACE
BINGO and PALACE INDIAN
GAMING, and DOES I-XX

Defendants.

HEARING DATE: February 20, 2003
TIME: 9:00 a.m.
DEPT: 54, Hon. Joe Gray
ACTION FILED: July 31, 2002
TRIAL DATE: Not Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
TABLE OF EXHIBITS	vii
INTRODUCTION.....	1
STATEMENT OF FACTS.....	2
SUMMARY OF ARGUMENT	4
I. DESPITE DEFENDANT'S UNIQUE STATUS, IT IS SUBJECT TO REGULATION OF ITS OFF- RESERVATION CONDUCT AFFECTING STATE GOVERNMENTAL PROCESSES	6
II. THE MOTION TO QUASH RAISES THE QUESTION OF SUBJECT MATTER JURISDICTION.....	7
III. THE ACT, BY ITS TERMS, APPLIES TO THE TRIBE	8
IV. THE TRIBE IS NOT IMMUNE FROM REGULATION OF ITS ACTIVITIES AS A CAMPAIGN CONTRIBUTOR.....	9
A. The Act Implicates No Area Of Traditional Tribal Authority.....	10
B. California Has Substantial Sovereign Interests In The Integrity Of Its Elections Reserved By The 10th Amendment.....	11
C. No Federal Statute Prohibits Regulation Of Tribal Campaign Contributions.....	15
D. The "Minimal Burden" Rule Is Inapplicable Where Tribes Are Subject To Regulations Of General Application Governing Off- Reservation Activity.....	16
V. THE FPPC DOES NOT RELY ON EXPRESS WAIVER AS THE BASIS OF THIS COURT'S JURISDICTION.....	17
VI. THE RULE AGAINST IMPLIED WAIVER HAS NO APPLICATION TO THIS CASE	19
VII. THE COURT HAS JURISDICTION OVER THIS ENFORCEMENT ACTION.....	20
A. <i>Kiowa</i> Did Not Decide The Issue Presented To This Court.....	20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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17
18
19
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22
23
24
25
26
27
28

B. The Power To Regulate Necessarily Includes The Power To Enforce Statutes Protecting Integrity Of State Elections22

C. The FPPC Need Not Consider Alternatives To Enforcement24

D. Other States Enforce Their Campaign Contribution Laws Against Tribes And Have Recognized State Court Jurisdiction.....26

E. The Defendant's Remaining Authorities Are Inapposite28

VIII. CONCLUSION28

TABLE OF AUTHORITIES

Cases

<i>Babbitt Ford, Inc. v. Navajo Indian Tribe</i> 710 F.2d 587 (9th Cir. 1983), cert. denied 466 U.S. 926 (1984).....	23
<i>Bishop Paiute Tribe v. County of Inyo</i> 291 F. 3d 549 (9th Cir. 2002)	22
<i>Boisclair v. Superior Court</i> 51 Cal. 3d 1140 (1990).....	7, 8, 16, 20, 23
<i>Buckley v. Valeo</i> 424 U.S. 1 (1976)	13, 25
<i>C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma</i> 532 U.S. 411 (2001)	19
<i>California v. Cabazon Band of Mission Indians</i> 480 U.S. 202 (1987)	4, 21
<i>California v. Quechan Indian Tribe</i> 595 F. 2d 1153 (9th Cir. 1979)	29
<i>Cherokee Nation v. Georgia</i> 30 U.S. (5 Pet.) (1831).....	6
<i>Cotton Petroleum Corp. v. New Mexico</i> 490 U.S. 163 (1989)	6
<i>Fair Political Practices Commission v. Suitt</i> 90 Cal. App. 3d 125 (1979)	8, 9, 11
<i>Fort Belknap Indian Comm. of Fort Belknap Indian Reservation v. Mazurek</i> 43 F.3d 428 (9th Cir. 1994), cert. denied 516 U.S. 806 (1995)	24
<i>Great Western Casinos, Inc. v. Morongo Band of Mission Indians</i> 74 Cal. App. 4th 1407 (1999) cert. denied 531 U.S. 812 (2000)	7, 8, 19
<i>Gregory v. Ashcroft</i> 501 U.S. 452 (1991)	12, 13, 15, 20, 23
<i>Griset v. Fair Political Practices Com'n</i> 8 Cal. 4th 851 (1994)	14
<i>Inland Casino Corp. v. Superior Court</i> 8 Cal. App. 4th 770 (1992)	7
<i>Inyo County v. Paiute-Shoshone Indians of Bishop Comm. of Bishop Colony</i> 123 S.Ct. 618 (2002)	22
<i>Kiowa Tribe v. Manufacturing Technologies, Inc.</i> 523 U.S. 751 (1998)	passim

1	<i>Libertarian Party v. Eu</i>	
2	28 Cal. 3d 535 (1980).....	13
3	<i>Mescalero Apache Tribe v. Jones</i>	
4	411 U.S. 145 (1973).....	7, 16, 17, 20
5	<i>Middletown Rancheria of Pomo Indians v. Workers' Comp. Appeals Bd.</i>	
6	60 Cal. App. 4th 1340 (1998)	7
7	<i>Minnesota State Ethical Practices Board v. Red Lake DFL Committee</i>	
8	303 N.W. 2d 54 (Minn. Sup. Ct. 1981).....	26
9	<i>Moe v. Confederated Salish & Kootenai Tribes</i>	
10	425 U.S. 463 (1976).....	16
11	<i>Nevada v. Hicks</i>	
12	533 U.S. 353 (2001).....	22
13	<i>Nixon v. Shrink Missouri Government PAC</i>	
14	528 U.S. 377 (2000).....	13
15	<i>Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe</i>	
16	498 U.S. 505 (1991).....	18, 20
17	<i>Oliphant v. Suquamish Indian Tribe</i>	
18	435 U.S. 191 (1978).....	6
19	<i>Printz v. United States</i>	
20	521 U.S. 898 (1997).....	12
21	<i>Redding Rancheria v. Superior Court</i>	
22	88 Cal. App. 4th 384 (2001)	1, 6, 22, 23, 24, 28
23	<i>Rosario v. Rockefeller</i>	
24	410 U.S. 752 (1973).....	13
25	<i>Santa Clara Pueblo v. Martinez</i>	
26	436 U.S. 49 (1978).....	29
27	<i>Seminole Tribe of Florida v. Florida</i>	
28	517 U.S. 44 (1996).....	15
	<i>Shakopee Mdewakanton Sioux (Dakota) Community v.</i>	
	<i>Minnesota Campaign Finance and Public Disclosure Board</i>	
	586 N.W.2d 406 (Minn. Ct. App. 1998).....	27
	<i>Smith v. Hopland Band of Pomo Indians</i>	
	95 Cal. App. 4th 1 (2002)	19
	<i>Three Affiliated Tribes of Fort Berthold Reservation v.</i>	
	<i>Wold Engineering</i>	
	476 U.S. 877 (1986).....	5, 10, 18, 19
	<i>U.S. v. Kanchanalak</i>	
	192 F. 3d 1037 (D.C. Cir. 1999).....	9, 16

1	<i>United States v. Wheeler</i>	
2	435 U.S. 313 (1978)	6
3	<i>Warburton/Butner v. Superior Court</i>	
4	103 Cal. App. 4th 1170 (2002)	8
5	<i>Washington v. Confederated Tribes of Colville Indian Reserve</i>	
6	447 U.S. 134 (1980)	6
7	<i>White Mountain Apache Tribe v. Bracker</i>	
8	448 U.S. 136 (1980)	7
9	<i>Williams v. Lee</i>	
10	358 U.S. 217 (1959)	7

STATUTES

California

Constitution

11	California Constitution of 1850, Art. II, § 1.....	10
12	California Constitution Article II, § 8.....	10
13	California Constitution Article III, § 3.5	2
14	California Constitution Article IV, § 1	10

Codes

16	Government Code § 81000.....	1, 12
17	Government Code § 81002.....	12
18	Government Code § 82036.....	3
19	Government Code § 82047.....	8
20	Government Code § 84200.....	2
21	Government Code § 84200.7.....	3
22	Government Code § 84400.....	25
23	Government Code § 85320.....	9

United States

Constitution

26	United States Constitution, Article IV, § 4	2, 10, 12, 18, 24, 29
27	United States Constitution, 10th Amendment	2, 5, 6, 7, 12, 24, 29
28	United States Constitution, 15th Amendment	10

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2
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16
17
18
19
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27
28

Codes

2 U.S.C. § 431 (11)16

2 U.S.C. § 441e9

8 U.S.C. § 1401 (b)10, 11

22 U.S.C. § 611 (a).....9

Statutes

McCain Feingold Bipartisan Campaign Reform Act of 2002
P.L. 107-155; Mar. 27, 200216

Other

FEC Advisory Opinion, AO 2000-05 (May 15, 2000).....16

TABLE OF EXHIBITS

1.
Board
Declaration of George Dunst, Legal Counsel for Wisconsin State Elections

Ex. A Letter from Board to counsel for Oneida Tribe, 10/16/02

Ex. B Letter from Board to Oneida Business Committee, 11/13/91

2.
the Connecticut Elections Enforcement Commission
Declaration of Jeffrey B. Garfield, Executive Director and General Counsel of

Ex. A Registration information, Mashantucket Pequot PAC

Ex. B Campaign finance reports filed by Mashantucket Pequot tribe

Ex. C Most recent filings of Mashantucket Pequot tribe

Ex. D Registration information, Mohegan Sun tribe

Ex. E Campaign finance reports filed by Mohegan Sun tribe

Ex. F Most recent filings of Mohegan Sun tribe

3.
Declaration of Karen Getman, Chairman Fair Political Practices Commission

Ex. A Declaration of David Binder, principal in David Binder Research with exhibits filed in Opposition to Motion for Preliminary Injunction, *ProLife Council, Inc. v. Karen Getman et al.*, No. CIV S-00-1698 FCD GGH.

Ex. B Declaration of Stephen Hopcraft, President and co-owner of Hopcraft Communications filed in Opposition to Motion for Preliminary Injunction, *ProLife Council, Inc. v. Karen Getman et al.*, No. CIV S-00-1698 FCD GGH.

Ex. C Declaration of David Binder, principal in David Binder Research with exhibits filed in Support of Motion for Summary Judgment, *ProLife Council, Inc. v. Karen Getman et al.*, No. CIV S-00-1698 FCD GGH.

Ex. D Memorandum and Order, *ProLife Council, Inc. v. Karen Getman et al.*, No. CIV S-00-1698 FCD GGH.

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- Ex. E FPPC Late Contribution Violation, Stipulation, Decision and Order,
Pachenga Band of Luiseno Indians
- Ex. F Settlement Agreement of January 6, 2003 with Morongo Band of Mission
Indians
- Ex. G Sacramento Bee editorial of September 10, 1999 "FPPC rule changes;
Public needs more information, not less, about big givers."
- 4. Declaration of Alan Herndon, Chief Investigator for the Enforcement Division
of the Fair Political Practices Commission
 - Ex. A Examples of Single Reporting or No Reporting if Tribes Not Subject to
Political Reform Act ("PRA") Requirements
- 5. Declaration of Kevin Shelley, Secretary of State
 - Ex. A Report to Legislature, Online Disclosure Act of 1997, 6/1/01
 - Ex. B Report to Legislature, Online Disclosure Act of 1997, 6/3/02
- 6. Declaration of James K. Knox, Executive Director of Common Cause
 - Ex. A Top Ten Contributors 1983-2000
 - Ex. B Report on Campaign Contributions Relating to Proposition 5 on the
November 1998 General Election Ballot
 - Ex. C Excerpts From Appendix A. List of Gambling Contributor Violations
- 7. Declaration of Jeanne Olson, Executive Director of Minnesota Campaign
Finance and Public Disclosure Board
 - Ex. A Copy of *Minnesota State Ethical Practices Board v. Red Lake DFL Committee*,
303 N.W. 2d 54 (Minn. Sup. Ct. 1981)
 - Ex. B *Shakopee Mdewakanton Sioux (Dakota) Community v. Minnesota Campaign
Finance and Public Disclosure Board*, 586 N.W.2d 406 (Minn. Ct. App. 1998)
 - Ex. C Registration form, Lower Sioux Political Education Fund
 - Ex. D Registration form, Mah Mah Wi No Min - I
 - Ex. E Registration form, Shakopee Mdewakanton Sioux
 - Ex. F Registration form, Bois Forte Political Fund

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Ex. G Registration form, Fond du Lac Committee of Political Ed.

Ex. H Registration form, Leech Lake PAC

Ex. I Report listing associations and lobbyists registered with Board

8. Declaration of Alan Plofsky, Executive Director and General Counsel of the
Connecticut State Ethics Commission

Ex. A Client lobbyist financial compensation information filed by
Mashantucket Pequot Tribe

Ex. B Client lobbyist financial compensation information filed by Mohegan
Sun Tribe

Ex. C Complaint, stipulation and order *In the Matter Of A Complaint Against the
Mashantucket Pequot Tribal Nation/Foxwoods Resort Casino*, Docket No.
2001-13

9. Declaration of Dan Schek

Ex. A Aggregate of Total Contributions by Year for Tribes

10. Declaration of Robert M. Stern, President of the Center for Governmental
Studies, first General Counsel of the FPPC and co-author of Proposition 9

Ex. A Brief of Amici Curiae, *Buckley v. Valeo*

Ex. B Ballot argument, Proposition 9

Ex. C People's Lobby memo urging support for AB 453

Ex. D *Los Angeles Times* editorial ("Coverup for Contributions"), 8/24/77

Ex. E Letter transmitting AB 453 to Governor Brown requesting signature

INTRODUCTION

By this civil enforcement action the California Fair Political Practices Commission (FPPC) seeks monetary penalties and injunctive relief under the Political Reform Act of 1974 (the Act), Government Code section 81000 et seq., for past violations of the Act. This memorandum opposes the defendant Indian tribe's motion to quash for lack of jurisdiction filed January 17, 2003.

Under the Act, the defendant Santa Rosa Indian Community of the Santa Rosa Rancheria dba Palace Bingo and Palace Indian Gaming is a "person" subject to regulation by the Act. The FPPC's duty to ensure the defendant tribe's compliance is no different from its duty to ensure compliance of all who engage in regulated transactions.

This case raises the same issues as are under consideration by this court in *FPPC v. Agua Caliente Band of Cahuilla Indians*, Sacramento Superior Court Case No. 02AS04545. The FPPC has filed herewith a Notice of Related Cases under California Rules of Court, Rule 804 (b) (3). These are cases of first impression in California, although other states have enforced their campaign contribution laws against Indian tribes. The United States Supreme Court has not considered any case presenting the question whether the states have authority to enforce against Indian tribes laws protecting the integrity of state elections.

No case has determined that tribes have authority to interfere with states' rights of self-government, either as a matter of federal common law or by virtue of any federal statute. *No* case has held that tribes participate in state elections on a basis different from any other citizen or association.

The *only* cases curtailing state court civil jurisdiction over tribes for *off-reservation* conduct – *Kiowa* and *Redding Rancheria* – considered tribal economic transactions with private individuals or entities. Each applied a federal common law policy of deference to Congress in an arena in which Congress, by virtue of the Indian Commerce Clause, has plenary authority. Also, in each case tribal courts

1 provided an alternate forum with jurisdiction to resolve the dispute. Neither case held or
2 suggested that such immunity from suit, based on federal common law and statutes,
3 would or could extend to tribal participation in state elections, power over which is
4 reserved to the states by Article IV, § 4 of the United States Constitution through the
5 10th Amendment. In this arena there is no basis for deference to Congress because the
6 United States Constitution reserves power and authority to the states and limits the
7 power of Congress.

8 The states' interest in protecting the integrity of their state governments lies at
9 the heart of representative government and is essential to sovereignty of the states. The
10 United States Supreme Court has held that congressional intent to interfere with these
11 interests will not be inferred but must be "unmistakably clear." The tribe can show no
12 such congressional intent and has cited no precedent holding or suggesting that tribes
13 are free from enforcement of regulations protecting those interests and applicable
14 equally to all who make contributions to influence State voters and elected officials.

15 Although other California tribes comply with the Act, the defendant tribe has not.
16 The FPPC has no choice but to comply with the statutory mandate that it enforce the Act
17 vigorously for the benefit of all of its citizens, including defendant's members. Cal.
18 Const. Article III, section 3.5.

19 **STATEMENT OF FACTS**

20 The first amended complaint alleges that the defendant tribe failed to file semi-
21 annual campaign statements and failed to file late contribution reports from 1998
22 through 2001. According to its own records, the tribe made contributions of at least
23 \$125,000 to California political candidates and committees from January 1, 1998 to
24 June 30, 1998 (¶ 14). These contributions made the tribe a major donor committee
25 under section 84200 of the Government Code. (¶ 13). The tribe did not disclose these
26 contributions until it filed an untimely campaign statement for all of 1998 on August 24,
27 2002 under the name "Palace Indian Gaming Center" (¶ 16). On September 25, 2002, it
28 then filed a campaign statement for the first time under the name "Santa Rosa

1 Rancheria," disclosing an additional contribution of \$250,000 made in the Fall of 1998.
2 (§ 16). For the period July 1, 1998 through December 31, 1998 the tribe made
3 campaign contributions totaling at least \$117,250 but did not file a semi-annual
4 campaign statement. (§§ 18, 19). It disclosed these contributions in the late reports of
5 August 24 and September 25, 2002. (§ 20). For the period from July 1, 2000 through
6 December 31, 2000 the defendant made campaign contributions totaling at least
7 \$35,000 but did not disclose the contributions until it filed the late reports of August 24
8 and September 25, 2002. (§§ 21-23).

9 The tribe made late contributions, as defined by Government Code section
10 82036, in the November 1998 general election but failed to file the late contribution
11 reports required by Government Code sections 82036, 84200.7 and 84200.8. These
12 contributions were made under the name of Palace Bingo to Lieutenant Governor Cruz
13 Bustamante in the amount of \$110,000 (§§ 28-31) and in the name of Santa Rosa
14 Rancheria in the amount of \$250,000 to Yes on Proposition 5 Californians for Indian
15 Self-Reliance (§§ 32-35). At the time, the Yes on 5 initiative campaign was the most
16 expensive in California, with \$92,000,000 being spent collectively to set the terms for a
17 model gambling compact between the State and tribes. The initiative included a waiver
18 of California's sovereign immunity. (§ 32).

19 The Declarations of Alan Herndon, Chief Investigator for the Enforcement
20 Division of the FPPC and Dan Schek, Investigator III of the FPPC, support finding that
21 the tribe intends to influence California voters beyond its reservation borders on issues
22 affecting all Californians. The Declaration of Alan Herndon further shows that it is not
23 possible to know the true extent of such contributions or activity, unless the tribe
24 complies with the Act's disclosure requirements. Nor can the FPPC accurately audit
25 recipients' compliance. Certainly, voters cannot make informed decisions, when reports
26 are untimely or incomplete.

27 The Declarations of Karen Getman, Chairman of the FPPC; Kevin Shelley,
28 Secretary of State; Robert Stern, former FPPC General Counsel and President of the

1 Center for Governmental Studies; and James Knox, Executive Director of Common
2 Cause and the attached exhibits support finding that California has a significant interest
3 in protecting the integrity of its elections from the corrupting influence of significant
4 unreported campaign contributions by special interests.

5 The declarations by officials from the states of Wisconsin (George Dunst, Legal
6 Counsel for the Wisconsin State Elections Board), Connecticut (Jeffrey Garfield,
7 Executive Director and General Counsel of the Connecticut Elections Enforcement
8 Commission and Alan Plofsky, Executive Director and General Counsel of the
9 Connecticut State Ethics Commission), and Minnesota (Jeanne Olson, Executive
10 Director of the Minnesota Campaign Finance and Public Disclosure Board) show that
11 there is no tradition of tribal immunity with respect to enforcement of laws analogous
12 to the Act and that other states successfully enforce their laws, including in state court.

14 SUMMARY OF ARGUMENT

15 Put simply, the tribe cannot be fully eligible to participate in State elections and
16 at the same time be immune from enforcement of State laws protecting the integrity of
17 the very elections in which the tribe and its members may participate as voters,
18 candidates, and office holders. The defendant tribe and its members, as full participants
19 in the government they share with all other citizens of California, are subject to the
20 rules protecting all citizens from undue influence of money and from improper and
21 corrupt practices.

22 The principles of Indian law protecting tribal rights of self-government do not
23 apply here. Nor has the United States Supreme Court established "an inflexible *per se*
24 rule precluding state jurisdiction over tribes and tribal members in the absence of
25 express congressional consent." *California v. Cabazon Band of Mission Indians*, 480
26 U.S. 202, 214-15 (1987). The courts have analyzed tribal claims of immunity from
27 suit as a question of subject matter jurisdiction, not personal jurisdiction, and will go
28 beyond the allegations of the complaint to consider evidence.

1 In ruling on defendant's motion to quash, the court should make the following
2 determinations:

- 3 • The Act, by its terms, applies to the defendant.
- 4 • The tribe is not immune from regulation.
- 5 • The State's power to regulate includes the power to enforce.

6 The first determination is a pure question of state law. The second two raise questions
7 of Indian law, which require analysis of federal, as well as state, precedent. In this case
8 the latter two determinations also implicate 10th Amendment powers reserved to the
9 states in a manner not addressed by any existing federal decision. The few state
10 decisions find subject matter jurisdiction over tribes and tribal political committees.

11 To show that the state has power to regulate the tribal conduct at issue, this
12 opposition cites authorities and offers supporting evidence to show:

- 13 (1) the subject matter of the Act deals with an area devoid of traditional tribal
14 authority and affects no tribal sovereign interest;
- 15 (2) Congress has not preempted state authority in this area; and
- 16 (3) the 10th Amendment limits federal interference with sovereign state
17 interests in protecting the integrity of state elections. *See generally, Three Affiliated*
18 *Tribes of Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877, 884 (1986)
19 (trend is away from the idea of inherent Indian sovereignty and toward reliance on
20 federal pre-emption; pre-emption inquiry considers not only congressional plan but also
21 nature of the state, federal, and tribal interests at stake to determine whether, in the
22 specific context, the exercise of state authority would violate federal law).

23 To show that the State's power to regulate includes the power to enforce the Act
24 by state court action against the tribe, this opposition cites authorities and offers
25 supporting evidence to show:

- 26 (1) neither *Kiowa* nor *Redding Rancheria* (nor any other precedent cited by
27 defendant) is dispositive of the motion to quash;

1 (2) the State's sovereign interests cannot be protected without the ability to
2 enforce the Act against the tribe on the same basis as it is enforced against all others
3 whose conduct is subject to regulation by the Act, a power reserved to the State by the
4 10th Amendment.

5 **I. DESPITE DEFENDANT'S UNIQUE STATUS, IT IS SUBJECT TO**
6 **REGULATION OF ITS OFF-RESERVATION CONDUCT AFFECTING**
7 **STATE GOVERNMENTAL PROCESSES**

8 The FPPC does not dispute that the defendant tribe is a federally-recognized
9 Indian tribe (Santa Rosa MPA p. 1) and that, as such, the defendant enjoys unique status
10 in the state/federal system as a "domestic dependent nation." *See Cherokee Nation v.*
11 *Georgia*, 30 U.S. (5 Pet.) 1, 16 (1831). The FPPC agrees that the defendant, by virtue of
12 its unique status, has rights of tribal self-government assiduously protected by
13 Congress. This case in no way implicates those rights nor threatens that unique status.

14 Tribes are not parties to the United States Constitution and are not states within
15 the meaning of the Constitution. *See e.g. Cotton Petroleum Corp. v. New Mexico*, 490
16 U.S. 163, 191-92 (1989). It is equally clear that "Indian reservations do not partake of
17 the full territorial sovereignty of States or foreign countries." *Washington v.*
18 *Confederated Tribes of Colville Indian Reserve*, 447 U.S. 134, 165 n. 1 (1980)
19 (Brennan, J. concurring in part and dissenting in part). Indian tribes are "prohibited from
20 exercising . . . powers 'inconsistent with their status.'" *Oliphant v. Suquamish Indian*
21 *Tribe*, 435 U.S. 191, 208 (1978).

22 Tribal sovereignty is of a "unique and limited character [and] exists only at the
23 sufferance of Congress and is subject to complete defeasance." *United States v.*
24 *Wheeler*, 435 U.S. 313, 323 (1978). Congress' exercise of that power limits the reach
25 of state authority, in order to protect the right of tribes to make their own laws and to
26 be ruled by them. *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142
(1980) (quoting from *Williams v. Lee*, 358 U.S. 217, 220 (1959)).

27 On the other hand, it is well-settled that off-reservation conduct of tribes, *absent*
28 *a Congressional directive limiting state authority*, falls within the regulatory reach of

1 states. *See Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973); *see also*,
2 *Boisclair v. Superior Court*, 51 Cal. 3d 1140, 1158 (1990) (if primary situs of acts is
3 outside Indian territorial boundaries, tribal defendants have acted beyond their sovereign
4 authority and are not protected by sovereign immunity).

5 The tribe's unsupportable assertion of unique authority to inject its influence into
6 State elections without regard to state regulation implicates the sovereign interests of
7 the State of California and its citizens, including the tribe's members, to protect the
8 integrity of their elections. Neither the courts nor Congress have stripped the states of
9 the power to protect their citizens from the corrupting influence of undisclosed
10 contributions by anyone, including Indian tribes. This court's failure to exercise
11 jurisdiction would have the unwarranted effect of granting defendant unique power over
12 California's political processes, a result precluded by the 10th Amendment.

13 **II. THE MOTION TO QUASH RAISES THE QUESTION OF SUBJECT** 14 **MATTER JURISDICTION**

15 Defendant asserts that the question of tribal sovereign immunity is jurisdictional
16 in nature. (Santa Rosa MPA p.3). The courts have analyzed the question of tribal
17 immunity from suit as necessarily raising the question of subject matter jurisdiction.
18 *See Great Western Casinos, Inc. v. Morongo Band of Mission Indians*, 74 Cal. App.
19 4th 1407, 1417-18 (1999), *cert. denied* 531 U.S. 812 (2000); *see also, Boisclair v.*
20 *Superior Court*, 51 Cal. 3d at 1144, n. 1; *Middletown Rancheria of Pomo Indians v.*
21 *Workers' Comp. Appeals Bd.*, 60 Cal. App. 4th 1340, 1356 (1998); *Inland Casino*
22 *Corp. v. Superior Court*, 8 Cal. App. 4th 770, 778 (1992).

23 In resolving this question, the courts will consider evidence. *Western Casinos*,
24 74 Cal. App. 4th at 1417; *see also Boisclair v. Superior Court*, 51 Cal. 3d at 1158-59
25 (determination of the sovereign immunity issue required elaboration of facts underlying
26 allegations of the complaint; no immunity for off-reservation acts beyond the scope of
27 tribal authority); *Warburton/Butner v. Superior Court*, 103 Cal. App. 4th 1170 (2002)

1 (issuing mandate directing trial court to allow discovery on issue of subject matter
2 jurisdiction).

3 This memorandum demonstrates that the court has subject matter jurisdiction
4 over this dispute and should deny the motion to quash.

5 **III. THE ACT, BY ITS TERMS, APPLIES TO THE TRIBE**

6 By its terms the Act applies to tribes, as well as to all other "persons," including
7 sovereigns. Contrary to the tribe's suggestion, the Act does not detail every possible
8 kind of association, group or organization coming within the terms of the Act. (Santa
9 Rosa MPA p. 5). The Act defines "person" broadly as "an individual, proprietorship, firm,
10 partnership, joint venture, syndicate, business trust, company, corporation, limited
11 liability company, association, committee, and any other organization or group of
12 persons acting in concert." Gov't Code § 82047. At a minimum, a tribe is a group of
13 persons acting in concert.

14 The most closely analogous appellate decision held that even the California
15 Legislature is a "person" under the Act. *Fair Political Practices Commission v. Suitt*, 90
16 Cal. App. 3d 125 (1979). The court reasoned: "The act undeniably was intended to deal
17 comprehensively with the influence of money, *all money*, on electoral and
18 governmental processes." *Id.* at 132. The Legislature complained that treating it as a
19 person under the Act would infringe on its sovereign activities. The court rejected the
20 Legislature's contention, finding *no* sovereign interest in unscrutinized campaign
21 contributions:

22 ///

23 ///

24 [W]e do not see how bringing the glare of sunshine into the legislative process
25 infringes on any legitimate sovereign interest.

26 *Id.* at 133. The same reasoning requires this court to find that the defendant is a "person"
27 under the Act and defendant has *no* sovereign interest in secret contributions to
28 California candidates and ballot measures. Defendant dismisses *Suitt* without analysis.

1 Nor does the tribe try to explain how "bringing the glare of sunshine" on its
2 contributions to California election campaigns could infringe on any legitimate tribal
3 sovereign interest. (Santa Rosa MPA p.5)

4 In response to the argument that the Act was intended to apply only to
5 contributions by private entities, the *Suitt* court reasoned:

6
7 [A] very obvious reason for the absence of discussion of *public* campaign
8 contributions is not that the act intended such to remain secret and undisclosed, but
9 that contributions by governmental entities to political campaigns are per se
10 illegal. . . . Hence the need to specify such a proscription in the Act would have
11 been deemed unnecessary

12 *Id.* at 131-32. The contributions of other state and local governments, whether lawful or
13 unlawful, would also be subject to regulation by the Act under *Suitt*.

14 If the tribe were a foreign nation for purposes of the Act, it would be barred
15 altogether from making campaign contributions by the Federal Election Campaign Act
16 (FECA). 2 U.S.C. § 441e. "Foreign nationals" include individuals, partnerships,
17 associations, corporations, organizations, or any other combination of individuals. 22
18 U.S.C. § 611 (a). The FECA proscription applies to federal, state and local elections
19 (*U.S. v. Kanchanalak*, 192 F. 3d 1037, 1047 (D.C. Cir. 1999)) and is incorporated into
20 the Act by Government Code section 85320.

21 It follows that, under *Suitt*, the defendant tribe is subject to regulation by the Act,
22 notwithstanding its sovereign attributes.

23 ///

24 ///

25 **IV. THE TRIBE IS NOT IMMUNE FROM REGULATION OF ITS ACTIVITIES**
26 **AS A CAMPAIGN CONTRIBUTOR**

27 Applying the *Three Affiliated Tribes* pre-emption analysis to this case, there is
28 no basis for finding federal preemption or for deferring to Congress in this matter
implicating the sovereign powers of the State of California to protect the integrity of its
elections. "Good faith effort[s] to work with the Fair Political Practices Commission on

1 a government-to-government basis" (Santa Rosa MPA p. 1) cannot strip from California
2 voters their state constitutional right of direct legislation through the initiative process.
3 *See* Cal. Const. Art. II, § 8, Art. IV, § 1. Article IV § 4 of the United States Constitution
4 in turn protects California's right to adopt such protections as the right of initiative,
5 without interference by Congress. Adopted in 1911 to protect California voters from
6 the influence of the railroads, the right of initiative is a right that goes to the heart of
7 California's form of government. (And it is a right of which the defendant has taken full
8 advantage by advocating for and contributing to Proposition 5).

9
10 **A. The Act Implicates No Area Of Traditional Tribal Authority**

11 Obviously, there is no tradition of sovereignty or sovereign immunity with
12 respect to tribal or tribe member involvement in state elections. Defendant does not
13 contend otherwise.

14 The history of Indian involvement in California state government, to the extent
15 that it informs the "backdrop" of tradition, is not one of which Americans generally, or
16 Californians in particular, can be proud. Although the issue was debated at the California
17 Constitutional Convention, the majority agreed only to permit the Legislature to adopt
18 statutes enabling Indian suffrage by a two-thirds vote, in "special cases." Cal. Const. of
19 1850, Art. II, § 1. The Legislature never passed the enabling legislation. Even after
20 adoption of the 15th Amendment to the United States Constitution, Indians who had not
21 severed tribal ties had no right to

22 ///

23 vote and did not become citizens until the General Allotment Act of 1924,
24 43 Stat. 253 (codified at 8 U.S.C. § 1401 (b)).

25 This grant of full citizenship in 1924 was not envisioned in the era in which tribal
26 sovereign immunity first described neat, non-intersecting spheres of federal/Indian and
27 state jurisdiction. Nor was the current level of tribal political influence envisioned in
28 1924. As shown by the Declaration of Common Cause Executive Director James K.

1 Knox, by the 1990's tribes and tribal members had become active both in voter-initiated
2 and legislative lawmaking. The report attached to the Knox declaration shows that tribes,
3 including defendant Santa Rosa Rancheria, invested huge sums to successfully influence
4 the State electorate to adopt Proposition 5. (Exhibit B attached to Declaration of James
5 K. Knox). Exhibit A, to the Declaration of Dan Schek, shows that over the past five
6 years, California Indian tribes and tribal gaming entities, including defendant Santa Rosa
7 Rancheria, have invested substantial sums of money to influence the California electoral
8 process.

9 This evidence demonstrates the tribe's intent to affect voters beyond their
10 reservation borders and to affect public policy beyond tribal interests *per se*. All of this
11 activity is regulated by the Act. The only burden imposed on the tribe is the same burden
12 imposed without discrimination on all other campaign donors.

13 To paraphrase *FPPC v. Suitt*, bringing the glare of sunshine into the processes by
14 which the tribe seeks to influence State government infringes on no legitimate
15 sovereign interest of the tribe. Tribes and tribe members are welcome to participate in
16 State government according to the same rules and constraints on improper activities
17 applicable to any other person governed by the Act. The Declarations of George Dunst
18 (Wisconsin), Alan Plofsky and Jeffrey Garfield (Connecticut) and Jeanne Olson
19 (Minnesota) show, however, that tribes enjoy no tradition of sovereign authority in this
20 arena to support their unilateral undermining of the statutes protecting the integrity of
21 state government.

22 **B. California Has Substantial Sovereign Interests In The Integrity Of**
23 **Its Elections Reserved By The 10th Amendment**

24 The Act seeks to ensure that State and local government "serve the needs and
25 respond to the wishes of all citizens equally, without regard to their wealth." Gov't Code
26 § 81001(a). The Act finds, among other things, that "existing laws for disclosure of
27 campaign receipts and expenditures have proved to be inadequate" (§ 81001(d)), and that
28 "previous laws regulating political practices have suffered from inadequate
enforcement" (§ 81001(h)). Purposes of the Act include (1) fully informing voters and

1 inhibiting improper practices (§ 81002(a)) and providing adequate enforcement
2 mechanisms to public officials and private citizens so that the Act will be "vigorously
3 enforced" (§ 81002(f)).

4 Unlike the commercial interests at stake in *Kiowa Tribe v. Manufacturing*
5 *Technologies, Inc.*, 523 U.S. 751 (1998), this case goes to the heart of California
6 sovereign interests in governing its own political processes. Indeed, the very arguments
7 upon which the defendant relies support California's right and interest as a sovereign to
8 protect and preserve its own right of self-government. However, the State's interests,
9 unlike tribal interests in self-government, are reserved to the states by the United States
10 Constitution Article IV, section 4 (guaranteeing every state a republican form of
11 government), through the 10th Amendment.

12 Under the 10th Amendment the states retained "a residuary and inviolable
13 sovereignty." *See e.g. Printz v. United States*, 521 U.S. 898, 918-19 (1997). The states'
14 power to determine the qualifications of their government officials is a power "reserved
15 to the States under the 10th Amendment and guaranteed to them by that provision of the
16 Constitution under which the United States 'guarantee[s] to every State in the Union a
17 Republican Form of Government.'" *Gregory v. Ashcroft*, 501 U.S. 452, 463 (1991).

18 ///

19 ///

20 In upholding a Missouri constitutional provision prescribing the mandatory
21 retirement age for State judges, the Court in *Gregory* described the inherent
22 sovereignty invoked by the FPPC in this action:

23
24 [I]t is a decision of the most fundamental sort for a sovereign entity. Through the
25 structure of its government, and the character of those who exercise government
26 authority, a State defines itself as a sovereign. "It is obviously essential to the
27 independence of the States, and to their peace and tranquility, that their power to
28 prescribe the qualifications of their own officers . . . should be exclusive, and free
from external interference, except so far as plainly provided by the Constitution of
the United States.

1 *Id.* at 460. Subject only to limits imposed by the United States Constitution, the Court
2 held that such power "inheres in the State by virtue of its obligation . . . 'to preserve the
3 basic conception of a political community.'" [citations omitted]. *Id.*

4 More recently *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377
5 (2000), held that *Buckley v. Valeo*, 424 U.S. 1 (1976), is authority for state limits on
6 contributions to state political candidates. The Court recognized the state's legitimate
7 and substantial "interests of preventing corruption and the appearance of it that flows
8 from munificent campaign contributions." 528 U.S. at 390. *See also, e.g. Rosario v.*
9 *Rockefeller*, 410 U.S. 752, 761 (1973) (citing additional cases) (clear that preservation
10 of the integrity of the electoral process is a legitimate and valid state goal); *Libertarian*
11 *Party v. Eu*, 28 Cal. 3d 535, 542 (1980) (state interest in preserving integrity of
12 elections is compelling).

13 This case presents the same sovereign interests of California in a concrete
14 factual setting. The Declaration of Fair Political Practices Commission Chairman
15 Karen Getman shows that the FPPC has demonstrated California's substantial interests
16 protected by the campaign disclosure requirements of the Act. The United States
17 District Court for the Eastern District of California made this finding in *California*
18 *ProLife Council, Inc. v. Karen Getman et al.*, No. CIV S-00-1698 FCD GGH. (Getman
19 Dec. Ex. D). The ProLife Council's appeal is pending in the Ninth Circuit Court of
20 Appeals. To support the court's finding of the Act's constitutionality, the FPPC produced
21 evidence that voters can and do change their voting behavior when they are informed of
22 the identities of the supporters or opponents of candidates or ballot measures. See
23 Getman Dec. Ex. A and C (Declarations of David Binder, principal in David Binder
24 Research with exhibits) and Ex. B (Declaration of Stephen Hopcraft, President and co-
25 owner of Hopcraft Communications). Additional evidence showed information gleaned
26 from publicly filed campaign finance disclosure reports is "absolutely critical" both to
27 voters and the news media, particularly in sorting through claims and counter-claims
28 about ballot measures.

1 The *ProLife Council* court found that the Ninth Circuit and the United States
2 Supreme Court had recognized the State's interest in informing the electorate of
3 campaign expenditures and found further that the evidence demonstrated the interest is
4 "particularly strong in California." By separate request for judicial notice the FPPC has
5 requested that this court take judicial notice of the court's finding and of the evidence
6 supporting the finding. *See also, Griset v. Fair Political Practices Com'n*, 8 Cal. 4th
7 851, 852 (1994) (recognizing state interest in assuring that the electorate has
8 information regarding the source of political campaign funds).

9 The Declaration of Secretary of State Kevin Shelley and attached exhibits show
10 that neutral, nonpartisan application of the Act's disclosure requirements is essential to
11 accomplishing the Act's purposes. Further, the democratic process is grossly
12 undermined when voters fail to receive full and timely information about contributions
13 by major donors. The high public interest is indicated by the Cal-Access web site's
14 receiving more than 500,000 "hits" in the months leading up to the March 2002 primary
15 election, giving public access to some 35,000 electronic filings.

16 As mentioned at the outset, this case presents a question of first impression in
17 addressing the doctrine of tribal sovereign immunity from suit in the context of a state's
18 constitutionally secured sovereign right to prescribe and enforce the laws that govern its
19 electoral processes. However, *Seminole Tribe of Florida v. Florida*, 517 U.S. 44
20 (1996) presented an analogous situation, in that Congress legislatively asserted its
21 plenary power under the Indian Commerce Clause in a manner that infringed upon a
22 constitutionally secured attribute of state sovereignty. In fact, it was the state's
23 sovereign immunity from suit that was at issue in *Seminole Tribe*. Congress had
24 authorized Indian tribes to sue states to compel them to negotiate tribal gaming pacts
25 under the Indian Gaming Regulatory Act. The Supreme Court held that Congress did not
26 have the power to abrogate a state's sovereign immunity as secured under the Eleventh
27 Amendment to the Constitution. Even in *Kiowa*, the Supreme Court recognized that
28 Congress is "subject to constitutional limitations" in setting the scope of tribal

1 sovereign immunity. *Kiowa Tribe v. Manufacturing Technologies, Inc.*, 523 U.S. at.
2 759. In short, this matter raises the constitutional limits to congressional power under
3 the Indian Commerce clause.

4 As a matter of fact and of law, there can be no doubt of the State's great and
5 fundamental interest in protecting the integrity of its elections, subject only to
6 limitation by the United States Constitution. This interest defines the very essence of
7 state sovereignty. In this arena Congress has not attempted to limit state regulatory
8 power over tribes and tribe members. Its attempt to do so would be subject to challenge
9 under the 10th Amendment.

10
11 **C. No Federal Statute Prohibits Regulation Of Tribal Campaign Contributions**

12 Most important for resolution of this motion, the *Gregory* Court held that "[I]f
13 Congress intends to alter the 'usual constitutional balance between the States and the
14 Federal Government,' it must make its intention to do so 'unmistakably clear in the
15 language of the statute.' [citations omitted]." *Id.* 501 U.S. at 460. No federal statute
16 expressly or by implication prohibits state regulation of Indian contributions to state
17 elections.

18 The Federal Election Campaign Act (FECA) regulates tribal contributions to
19 federal elections and does not limit the authority of states to regulate tribal
20 contributions to state elections. Indian tribes are subject to contribution limitations
21 applicable to "persons," as defined by FECA ("an individual, partnership, committee,
22 association, corporation, labor organization, or any other organization or group of
23 persons" but not including the federal government). 2 U.S.C. § 431 (11). *See* FEC
24 Advisory Opinion, AO 2000-05 (May 15, 2000) (citing AO 1978-51, 1999-32, 1993-
25 12); *see generally* *U.S. v. Kanchanalak*, 192 F. 3d 1037, 1043 (D.C. Cir. 1999) (FEC's
26 interpretation of the Act should be accorded considerable deference).

27 According to the recent Congressional Research Service Report to Congress,
28 under the recently enacted McCain Feingold Bipartisan Campaign Reform Act of 2002

1 (P.L. 107-155; Mar. 27, 2002) (BCRA), Indian tribes, like other "persons," will be
2 subject to the new, increased contribution limits and will not be permitted to make soft
3 money donations to political parties.

4 Since no federal statute, including FECA and BCRA, expressly attempts to limit
5 state regulation in this area having no impact on tribal sovereign interests, the tribe's
6 transactions are subject to regulation on the same basis as any other "person" under the
7 Act. *See Mescalero Apache Tribe v. Jones*, 411 U.S. at 148; *see also, Boisclair v.*
8 *Superior Court*, 51 Cal. 3d at 1158.

9 **D. The "Minimal Burden" Rule Is Inapplicable Where Tribes Are**
10 **Subject To Regulations Of General Application Governing Off-**
11 **Reservation Activity**

12 The tribe asserts that where tribes are subject to state regulation, the pertinent
13 regulation may impose only a "minimal burden," citing *Moe v. Confederated Salish &*
14 *Kootenai Tribes*, 425 U.S. 463, 465 (1976). (Santa Rosa MPA p.6). In *Moe*, the state
15 sought to impose the obligation to collect state taxes on on-reservation sales of
16 cigarettes to non-Indians. The state did not, under the supremacy clause, have the power
17 to impose a tax on personal property located within the reservation and owned by
18 Indians, to impose a vendor license fee on reservation Indians conducting cigarette
19 business for the tribe on reservation land, or to collect cigarette sales taxes on
20 reservation sales by Indians to Indians. However, the state could require Indian retailers
21 on the reservation to add the tax on cigarettes to the sales price on sales to non-Indians.
22 The Court found nothing in the burden imposed on the retailer that frustrated tribal self-
23 government or ran afoul of any congressional enactment dealing with the affairs of
24 reservation Indians. *Id.* at 483.

25 Unlike the situation in *Moe*, where the state lacked the power to impose the
26 subject tax on personal property that was within the reservation, the State of California
27 has the undisputed power to regulate its electoral processes. Moreover, this power is
28 reserved to it under the 10th Amendment to the Constitution. As such, the minimal

1 burden analysis set forth in *Moe*, where the state lacked the direct regulatory power over
2 the subject matter, has no application in this case.

3 Even without looking to the State's constitutionally reserved power to govern its
4 own electoral processes, the United States Supreme Court has distinguished application
5 of state laws where the regulated conduct is on-reservation from laws of general
6 application regulating off-reservation conduct. Thus, "[t]he upshot has been the repeated
7 statements of this Court to the effect that, even on reservations, state laws may be
8 applied unless such application would interfere with reservation self-government or
9 would impair a right granted or reserved by federal law." *Mescalero Apache Tribe v.*
10 *Jones*, 411 U.S. 145, 148 (1973). "But tribal activities conducted outside the
11 reservation present different considerations." *Id.* "Absent express federal law to the
12 contrary, Indians going beyond reservation boundaries have generally been held subject
13 to non-discriminatory state law otherwise applicable to all citizens of the State."
14 *Id.* at 148-49.

15 Just as in *Mescalero*, in this case the FPPC seeks to enforce a law of general
16 application equally against all who make regulated campaign contributions. Whether the
17 statute could be rewritten to be less onerous is not an issue for the court's determination
18 in resolving the motion to quash.

19
20 **V. THE FPPC DOES NOT RELY ON EXPRESS WAIVER AS THE BASIS OF
THIS COURT'S JURISDICTION**

21 Without reference to the above-discussed authorities, the defendant treats the
22 issue of immunity from suit as a simple one of waiver. (Santa Rosa MPA pp. 2-5). It
23 argues that the court has jurisdiction only if the tribe unequivocally expressed waiver of
24 the tribe's sovereign immunity. The cited cases, each of which deals with transactions--
25 on- or off-reservation--between a tribe and a non-Indian private entity or individual, are
26 inapposite. At the foundation of each of these decisions is a rule of federal common law
27 deference to Congress in matters where Congress has plenary authority *except* where
28 tribes have expressly waived their immunity.

1 Thus, in *Kiowa Tribe v. Manufacturing Technologies, Inc.*, 523 U.S. at 756-760
2 (1998) (Santa Rosa MPA p.3), the United States Supreme Court recognized that the
3 doctrine of tribal sovereign immunity from suit rests (almost by accident) on decisions
4 of the Court. Nevertheless it declined to abrogate the doctrine in that case, in deference
5 to Congress' role in regulating contracts--involving governmental or commercial
6 activities and whether they were made on or off a reservation. In contrast, in this case,
7 the tribe asserts unique authority to participate in state elections free from regulations
8 governing all other campaign contributors. In this realm there is no basis for deference
9 to Congress because the constitution limits the power of Congress. Art. IV, § 4. When
10 tribes participate in state governmental processes, they participate on the same basis as
11 all others and the question of waiver does not arise. *See e.g. Three Affiliated Tribes*,
12 476 U.S. at 890 (in analogous context of tribal rights of access to state courts, tribe
13 conceded that it was subject to the ordinary processes of state court).

14 In *Oklahoma Tax Com'n v. Citizen Band Potawatomi Indian Tribe of*
15 *Oklahoma*, 498 U.S. 505 (1991) (Santa Rosa MPA p. 2), the Court held that the tribe's
16 suit for equitable relief from taxes on cigarette sales to nonmembers did not waive its
17 immunity from a counterclaim to enforce assessment of the taxes and to enjoin future
18 nontaxed sales. *Id.* at 509.

19 In contrast, in a situation more analogous to this case, *Three Affiliated Tribes*
20 found that a tribe affording itself of its right to adjudicate disputes in state court *was*
21 subject to non-Indian defendant counterclaims arising out of the same transaction or
22 occurrence that is the subject of the principal suit, as a setoff or recoupment. 476 U.S.
23 at 890. It is only in this limited sense--the sense of the tribe's voluntary participation in
24 and exercise of rights of access to state government processes--that the FPPC asserts
25 the tribe relinquished any right to be free from enforcement of the regulations
26 governing all such participants. No express agreement to be regulated was necessary
27 from the tribe or any other participant in its elections, any more than express agreement
28 to be bound by state court processes was necessary in *Three Affiliated Tribes*.

1 The other cases cited by defendant involve construction of contractual provisions
2 directly addressing waiver of immunity--a type of waiver not at issue in this case. *See*
3 *Smith v. Hopland Band of Pomo Indians*, 95 Cal. App. 4th 1 (2002) (Santa Rosa MPA
4 p. 2) (tribe waived immunity from suit by the architect to collect his fees by approving a
5 contract including such a waiver); *C & L Enterprises, Inc. v. Citizen Band Potawatomi*
6 *Indian Tribe of Oklahoma*, 532 U.S. 411 (2001) (Santa Rosa MPA p.3) (arbitration
7 provisions in a construction contract constituted clear waiver of immunity against suit
8 to enforce arbitration award); *Great Western Casinos, Inc. v. Morongo Band of*
9 *Mission Indians*, 74 Cal. App. 4th 1407 (1999) (Santa Rosa MPA p.2) (tribe did not
10 waive its immunity from suit by agreeing to arbitration in a narrowly defined situation
11 and under conditions not alleged in complaint). These contract cases are inapposite to
12 this case in which the issue of sovereign immunity arises in the context of a tribe's
13 participation in electoral processes at the heart of the State's sovereign interests.

14 **VI. THE RULE AGAINST IMPLIED WAIVER HAS NO APPLICATION TO**
15 **THIS CASE**

16 The defendant asserts without citation to authority that the tribe's "inherent
17 immunity" cannot be waived by mere implication. (Santa Rosa MPA p.5). This notion is
18 inapplicable where tribes have no authority or tradition of sovereign immunity. It is well
19 settled that off-reservation conduct of tribes, *absent a Congressional directive*
20 *limiting state authority*, falls within the regulatory reach of states. *See Mescalero*
21 *Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973); *see also, Boisclair v. Superior*
22 *Court*, 51 Cal. 3d at 1158 (if primary situs of acts is outside Indian territorial
23 boundaries, tribal defendants have acted beyond their sovereign authority and are not
24 protected by sovereign immunity).

25 Again, because this case implicates the State's reserved powers under the 10th
26 Amendment, the whole line of implied waiver cases pertaining to tribal sovereign
27 immunity is inapposite. Indeed, the rule applicable in this case is that Congressional
28 intent to interfere with state sovereignty in the area of state elections, cannot be

1 inferred, but must be express. *Gregory v. Ashcroft*, 501 U.S. at 460. Absent the express
2 intent of Congress to abrogate the State's sovereign power over its elections by virtue of
3 the application of tribal sovereign immunity, no such congressional intent will be
4 implied.

5 **VII. THE COURT HAS JURISDICTION OVER THIS ENFORCEMENT** 6 **ACTION**

7 The FPPC acknowledges that state authority to regulate does not answer the
8 question whether an enforcement action may be brought against a tribe. *See e.g.*
9 *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505,
10 513 (1991). However, *Kiowa Tribe v. Manufacturing Technologies, Inc.*, 523 U.S. 751
11 (1998), the *only* Supreme Court decision directly addressing tribal immunity from suit
12 for off-reservation conduct, says nothing about immunity from suit in connection with
13 tribal injection into a state's political processes. In this instance, the State's sovereign
14 interest in protecting the integrity of its elections necessarily includes the authority to
15 enforce the Act against all major donors, including defendant Indian tribe. The tribe
16 should also acknowledge, as noted above, that the United States Supreme Court has not
17 established an inflexible *per se* rule precluding state jurisdiction over tribes and tribal
18 members in the absence of express congressional consent. *California v. Cabazon Band*
19 *of Mission Indians*, 480 U.S. at 214-15.

20 **A. *Kiowa* Did Not Decide The Issue Presented To This Court**

21 No federal case has addressed the issues raised by this motion to quash. *Kiowa*
22 *Tribe v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998), is the only United
23 States Supreme Court decision directly addressing tribal immunity from suit for off-
24 reservation conduct. The three dissenting justices recognized *Kiowa* is the *first* decision
25 of the United States Supreme Court to state that the court-created doctrine of sovereign
26 immunity from lawsuits applies to off-reservation activities or transactions. Justice
27 Stevens' dissenting opinion states:

1 Despite the broad language used in prior cases, it is quite wrong for the
2 Court to suggest that it is merely following precedent, for we have simply
3 never considered whether a tribe is immune from a suit that has no
4 meaningful nexus to the tribe's land or its sovereign functions. Moreover,
5 none of our opinions has attempted to set forth any reasoned explanation
6 for a distinction between the States' power to regulate the off-reservation
7 conduct of Indian tribes and the States' power to adjudicate disputes arising
8 out of such off-reservation conduct.

9 *Id.* at 764.

10 As broad as its holding is phrased, *Kiowa* says nothing about tribal immunity
11 from suit in connection with tribal participation in a state's political processes or
12 affecting sovereign interests reserved to the states by the 10th Amendment. *Kiowa's*
13 holding applies only to tribal transactions, whether governmental or commercial,
14 whether on- or off-reservation, between tribes and *private* individuals or entities. The
15 decision does not address tribal interactions with or injection directly into the affairs of
16 state governments. No case applying *Kiowa*, including *Redding Rancheria*, 88 Cal. App.
17 4th 384 (2001), has so extended its holding.

18 More recently, *Nevada v. Hicks*, 533 U.S. 353, 362 (2001), not only protected
19 the state of Nevada's ability to enforce its process on Indian lands but also disclaimed
20 any right of tribes either to arrest the operations of state government at their will or to
21 serve as havens for state law-breakers. The decision in *Hicks* supports the FPPC's view
22 that the Supreme Court has not yet spoken directly on tribal sovereign immunity from
23 suit where the claim of immunity relates to off-reservation assertion of authority over
24 or interfering with the state's reserved powers of self-government.

25 On December 2, 2002, the Court granted certiorari to review the 9th Circuit
26 decision that, seemingly contrary to *Hicks*, held that a county and its agents violated a
27 tribe's sovereign immunity when they obtained and executed a search warrant against the
28 tribe and tribal property related to an investigation of tribal welfare fraud. *Bishop Paiute
Tribe v. County of Inyo*, 291 F. 3d 549 (9th Cir. 2002), certiorari granted by *Inyo
County v. Paiute-Shoshone Indians of Bishop Community of Bishop Colony*, 123
S.Ct. 618 (2002). The grant of certiorari further supports the FPPC's position that

1 *Kiowa* does not limit state's rights to protect the integrity of state government
2 processes.

3 The defendant tribe's assertion of power in this case to make unregulated
4 contributions to California candidates, office holders and voter initiatives would give it
5 the right to arrest the operation of the Act at its will and to serve as a money laundering
6 haven for law-breakers. The Declaration of Robert Stern, the first General Counsel of
7 the FPPC and co-author of the Act, shows that the tribe could completely undermine the
8 Act, if it were not subject to enforcement of its provisions.

9 ///

10 ///

11 No Supreme Court or California appellate decision supports this exercise of
12 unregulated, potentially corrupting influence by *any* sovereign, group or Indian tribe
13 over state elections. *Cf. Redding Rancheria v. Superior Court*, 88 Cal. App. 4th 384
14 (2001) (applying *Kiowa* in a case involving off-reservation tortious conduct of a tribal
15 casino employee at a tribe-sponsored function).

16 The FPPC relies on the California Supreme Court decision in *Boisclair* and the
17 above-cited decisions of the United States Supreme Court for the proposition that the
18 tribe cannot prevail in its motion absent a showing that Congress *expressly* limited the
19 State's rights, reserved by the 10th Amendment, to protect the integrity of its elections
20 by enforcing the Act. Absent a showing of a tradition of tribal sovereignty in this arena,
21 Congressional intent to interfere with state sovereignty in the area of state elections,
22 cannot be inferred, but must be express. *Gregory v. Ashcroft*, 501 U.S. at 460.
23 Accordingly, *Redding Rancheria* is not on point and is not dispositive of the motion.

24
25 **B. The Power To Regulate Necessarily Includes The Power To Enforce
Statutes Protecting Integrity Of State Elections**

26 Where tribes have no tradition of sovereignty and where state sovereign interests
27 are extraordinary, even in the absence of an express delegation to authority by Congress,
28 the courts have recognized that a necessary incident of the power to regulate is the

1 power to enforce. This general proposition has been recognized both as an aspect of
2 Indian and of state sovereignty.

3 Thus, for example, in *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587
4 (9th Cir. 1983), cert. denied 466 U.S. 926 (1984), an Indian tribe was found to have
5 authority to exercise civil jurisdiction over non-Indians conducting vehicle
6 repossessions on reservation land. Because the regulations governing the conduct of
7 non-Indians were a legitimate exercise of the tribe's inherent powers, civil jurisdiction
8 to enforce the regulations was a "necessary exercise of tribal self-government." *Id.* at
9 598.

10 This same principle has been applied, even in the absence of express
11 Congressional authority, where states have authority to regulate tribal conduct. *See Fort*
12 *Belknap Indian Community of Fort Belknap Indian Reservation v. Mazurek*, 43 F.3d
13 428 (9th Cir. 1994), cert. denied 516 U.S. 806 (1995). *Fort Belknap* dealt with
14 regulation of liquor laws in Indian Country. Since there is no tradition of Indian
15 sovereignty in this arena, "little if any weight" would be accorded to asserted interests in
16 tribal sovereignty. *Id.* at 433. The court in *Fort Belknap* reasoned that, without the
17 power to prosecute violations, the state authority to regulate would be meaningless and
18 the state's high interest unprotected. *Id.* at 434.

19 The same reasoning applies to the "unusual subject" of inherent state authority to
20 govern and protect the integrity of its elections. Enforcement of the Act would infringe
21 no aspect of tribal self-government. There is no traditional backdrop of sovereign
22 authority and the state's interests could not be higher: the Article IV, section 4 power,
23 reserved to the states by the 10th Amendment, to supervise their own elections, subject
24 only to constitutional limitation, is the essence of state sovereignty.

25 If California were without authority to enforce its regulations, the tribe could
26 corrupt state government with impunity, as shown by the Declaration of Robert Stern.
27 No precedent supports the result advocated by the tribe. Unlike the situations in *Kiowa*
28 and *Redding Rancheria*, involving tribal transactions with private individuals or entities,

1 where tribal courts exist as an alternative forum for dispute resolution, there is no
2 alternative forum and no remedy available, unless the Act is enforced in state court. As
3 in *Fort Belknap*, by necessity the right to regulate, in this case involving the State's
4 reserved powers of self-government, includes the right to enforce in state court.
5 Because of the 10th Amendment reserved powers of the State, the lack of express
6 Congressional authority, as in *Fort Belknap*, is not dispositive.

7 ///

8 **C. The FPPC Need Not Consider Alternatives To Enforcement**

9 Defendant argues that alternatives should be accepted in lieu of compliance with
10 the Act. (Santa Rosa MPA at p.8). As shown above, any alternative to equal enforcement
11 of the Act against all contributors would turn California government on its head. The
12 voters have a right of direct legislation. They have enacted protections from the
13 corrupting influence of large campaign donors. They need not negotiate to enforce that
14 right.

15 The Declaration of Robert Stern, President of the Center for Governmental
16 Studies, former general counsel of the FPPC and principal co-author of Proposition 9,
17 which enacted the Act, shows that basic tenets of the Act were that it should strengthen
18 the disclosure requirements (§ 5) and should apply to *all* contributors (§ 8). When, after
19 *Buckley v. Valeo*, the FPPC proposed a regulation to exempt certain minority
20 candidates (§ 9), the Legislature swiftly passed AB 453 prohibiting the FPPC from
21 exempting any person from the Act's requirements (§§ 10-11). Gov't Code § 84400.
22 Evidence supporting Stern's assertion that the Act is intended to apply to all contributors
23 includes the FPPC's amicus brief in *Buckley v. Valeo* (Ex. A), the Proposition 9 ballot
24 argument (Ex. B), the Legislative Counsel Digest to AB 453 (Ex. C), a *Los Angeles*
25 *Times* editorial ("Coverup for Contributions") (Ex. D), and the letter transmitting the bill
26 to Governor Brown requesting his signature (Ex. E).

27 The Declaration of Robert Stern shows that keys to the success of the Act have
28 been its requirements of full and timely disclosure with "double reporting" (§ 13) and

1 vigorous enforcement (§ 14). The tribe's conduct threatens to completely undermine the
2 Act. The tribe could fund independent expenditure campaigns without revealing the
3 source of funds. It could serve as a conduit for others who seek secretly to influence
4 state elections. (§§ 16, 17). It could make compliance auditing impossible.

5 United States Constitution, Article IV, section 4, through the 10th Amendment,
6 protects California voters from having to entrust protection of their elections to
7 Congress or even to their own elected officials. *Oklahoma Tax Com'n v. Citizen Band*
8 *Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991) (Santa Rosa MPA p.8), is
9 inapposite because it dealt with regulation of on-reservation commercial transactions
10 between Indians and non-Indians. Here, the FPPC seeks to regulate tribal participation in
11 the state's elections on the same basis as it regulates all other participants. This activity
12 is at the heart of state sovereignty and the tribe has no authority to participate free from
13 generally applicable regulations protecting the integrity of those elections.

14 **D. Other States Enforce Their Campaign Contribution Laws Against**
15 **Tribes And Have Recognized State Court Jurisdiction**

16 Further demonstrating the lack of a basis for assertion of tribal sovereign
17 immunity, the evidence in support of this opposition shows that several states with
18 tribes operating large casinos enforce campaign contribution regulations against the
19 tribes participating in their state politics. The attached evidence is by way of example
20 only. More similar evidence could be adduced, if there were additional time. The FPPC
21 has located no state (or federal) decision that holds that state courts do not have
22 jurisdiction over comparable enforcement actions.

23 The Declaration of Jeanne Olson, Executive Director of the Minnesota Campaign
24 Finance and Public Disclosure Board, shows that only two tribes have refused to comply
25 with that state's disclosure and reporting laws. Both cases required legal action and in
26 both cases the Minnesota courts found that they had subject matter jurisdiction. The
27 declaration attaches copies of the two court decisions.

1 In *Minnesota State Ethical Practices Board v. Red Lake DFL Committee*, 303
2 N.W. 2d 54 (Minn. Sup. Ct. 1981) (Olson Dec. Ex. A), the Minnesota Supreme Court
3 held that a tribal committee was subject to registration and disclosure laws, when the
4 committee paid for political advertisements disseminated outside the reservation
5 endorsing candidates for state and federal office. The trial court had found subject
6 matter jurisdiction and had held the committee in contempt. The committee appealed
7 and the supreme court affirmed. The court recognized the special status of the Red Lake
8 Band of Indians, that the federal government had not transferred its exclusive
9 jurisdiction to the state and that, consequently, the band enjoyed unique rights of self-
10 government. *Id.* at 55. The court further noted that it had recognized instances where the
11 state lacked authority to govern the affairs of band members within the reservation. *Id.* at
12 56.

13 The court rejected the defendant's argument that the state lacked jurisdiction to
14 impose the requirements of its ethical practices act on the tribal committee. The
15 evidence showed that the committee intended to influence voters living outside the
16 reservation. *Id.* The court concluded that tribal activities calculated to influence voters
17 outside the reservation were a proper concern of the state and subject to its reasonable
18 regulation. It further found that the defendant committee had not demonstrated that such
19 regulation would have any adverse effect on tribal self-government. *Id.*

20 As plaintiff points out, the Red Lake Band participates in the election process, has
21 the same interest as other voters in the integrity of that process, and has a
22 corresponding obligation to comply with state laws which govern that process and
23 guard its integrity. Nor is the defendant Committee being asked to do any more
24 than other organizations outside the state which are required to comply with
Chapter 10A when they similarly seek to influence voters in the state.

25 *Id.*

26 In *Shakopee Mdewakanton Sioux (Dakota) Community v. Minnesota*
27 *Campaign Finance and Public Disclosure Board*, 586 N.W.2d 406 (Minn. Ct. App.
28 1998) (Olson Dec. Ex. B), the tribe made a direct contribution to a political party

1 without making disclosures required of unregistered associations. The tribe sought to
2 enjoin the Board's order that it make disclosures required by the act. The court of appeal
3 upheld the lower court's denial of the requested injunction and specifically rejected the
4 contention that the Board did not have authority over the tribe. *Id.* at 412.

5 The Declaration of Jeffrey Garfield, Executive Director of the Connecticut
6 Elections Enforcement Commission, shows that the tribes operating gambling casinos
7 in that state have not contested the Commission's jurisdiction and have fully complied
8 with the state's disclosure laws. (¶¶ 5-7). The Declaration of Alan Plofsky, Executive
9 Director and General Counsel of the Connecticut State Ethics Commission, shows that
10 the same two tribes comply with the state's laws governing lobbyist activities. (¶¶ 4-5).
11 Further, the Mashantucket Pequot tribe and its Foxwood Casino settled an enforcement
12 action and paid civil penalties for violating the gift limits and reporting requirements of
13 the State Ethics Code. The tribe did not contest the state's authority to enforce the
14 Ethics Code. (¶ 7, Ex C).

15 The Declaration of George Dunst, Legal Counsel for the Wisconsin Elections
16 Board, establishes that the states' politically active tribes comply with the state's
17 campaign finance disclosure laws. (¶ 4). Recently the Oneida Nation Tribe paid a
18 forfeiture fine of \$1,010 in connection with minor violations. (¶ 5). Attached to the
19 Dunst Declaration are the Board's letters informing the tribe that it is a "committee"
20 under Wisconsin's law (Ex. A and B).

21 These states and the tribes whose members are citizens of these states recognize
22 that there is no tradition of tribal sovereign immunity with respect to involvement in
23 state elections, that disclosure laws are integral to the integrity of state government, that
24 the protected interests are shared by tribes with all other state voters, and that there is
25 no tribal sovereign interest in undermining laws shedding light on contributions made to
26 influence state elections.

1 **E. The Defendant's Remaining Authorities Are Inapposite**

2 Other than *Kiowa* (and *Redding Rancheria*), the cases cited by defendant tribe
3 each relate to the question of state court jurisdiction over disputes having to do with on-
4 reservation activity implicating sovereign rights of self-government.

5 *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) (Santa Rosa MPA p. 3)
6 dealt with tribal membership. *California v. Quechan Indian Tribe*, 595 F. 2d 1153 (9th
7 Cir. 1979) (Santa Rosa MPA p. 3), dealt with enforcement of fish and game laws *on* a
8 reservation.

9 *None* of these cases addressed off-reservation activities interfering with or
10 undermining powers of self-government reserved to the states through Article IV,
11 section 4 by the 10th Amendment to the United States Constitution.

12 **VIII. CONCLUSION**

13 No precedent holds or suggests that the tribe may inject itself in the State's
14 elections, except on the same basis as any other person or association. This action
15 implicates no tribal sovereign interest and Congress has not preempted state authority in
16 this area. Rather, the paramount interest here is that of the State in protecting the
17 integrity of its governmental processes - a fundamental right of state sovereignty
18 protected by Art. IV, sec. 4 through the 10th Amendment. This court should deny
19 defendant tribe's motion to quash.

20
21 Dated: February _____, 2003

Respectfully submitted,

22
23 STEVEN BENITO RUSSO
LUISA MENCHACA
24 WILLIAM L. WILLIAMS, JR
HOLLY B. ARMSTRONG
25 FAIR POLITICAL PRACTICES
COMMISSION

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27 RIEGELS CAMPOS & KENYON LLP

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By _____
CHARITY KENYON
Attorneys for Plaintiff
FAIR POLITICAL PRACTICES
COMMISSION

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Santa Rosa Indian Community of the Santa Rosa Rancheria, and Does I-XX

I am over 18 years of age, and I am not a party to the within action. My business address is [REDACTED] Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814. I am employed in Sacramento, California.

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION
TO MOTION TO QUASH; REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO MOTION TO QUASH; DECLARATION OF GEORGE
DUNST IN SUPPORT OF OPPOSITION TO MOTION TO QUASH; DECLARATION
OF JEFFREY B. GARFIELD IN SUPPORT OF OPPOSITION TO MOTION TO
QUASH; DECLARATION OF KAREN GETMAN IN SUPPORT OF OPPOSITION TO
MOTION TO QUASH AND IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE;
DECLARATION OF ALAN HERNDON IN OPPOSITION TO MOTION TO QUASH;
DECLARATION OF JAMES K. KNOX IN SUPPORT OF OPPOSITION TO MOTION
TO QUASH; DECLARATION OF JEANNE OLSON IN SUPPORT OF OPPOSITION
TO MOTION TO QUASH; DECLARATION OF ALAN PLOFSKY IN SUPPORT OF
OPPOSITION TO MOTION TO QUASH; DECLARATION OF DAN SCHEK IN
OPPOSITION TO MOTION TO QUASH; DECLARATION OF SECRETARY OF
STATE KEVIN SHELLEY IN SUPPORT OF OPPOSITION TO MOTION TO QUASH;
DECLARATION OF ROBERT M. STERN IN SUPPORT OF OPPOSITION TO
MOTION TO QUASH; NOTICE OF LODGMENT OF COPIES OF FEDERAL AND
STATE CASES AND OTHER AUTHORITIES CITED BY PLAINTIFF IN PLAINTIFF'S
MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION
TO QUASH**

XXX By United States Postal Service Express Mail to the person(s) at the address(es) set forth below.

By placing a true copy, in a sealed envelope, with postage fully prepaid, in the United States Post Office mail at Sacramento, California, addressed to the person(s) at the address(es) set forth below. I am familiar with this agency's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in a U.S. mail box after the close of the business day.

1 By transmitting a true copy via facsimile to the person(s) at the facsimile number(s) set
2 forth below.

3 **SERVICE LIST**

4
5 Christina V. Kazhe
6 Monteau & Peebles LLP
7 1001 Second Street
8 Sacramento CA 95814

9 I declare under penalty of perjury that the foregoing is true and correct and that this
10 declaration is executed on February 10, 2003.

11 Kelly L. Winsor
12 Kelly L Winsor
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